IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11418 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

RAJESHKUMAR KANTILAL RAMI
Versus
CHAIRMAN, GPSC AND OTHERS

==========

Appearance :
MR RD RAVAL for the Petitioner
MR SK PATEL for Respondent Nos.1 & 4
MR AMIT PATEL, AGP for Respondent No.3

==========

CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 21/11/2007

ORAL JUDGMENT

1. The petitioner has approached this Court challenging the omission on the part of the Gujarat Public Service Commission in not calling him for interview for the post of Assistant Manager, Class-II, Advertisement No. 29 of 2000, on the ground

that the petitioner did not possess the prescribed experience.

2. The facts, in brief, deserve to be set out as under:

2.1. The petitioner is working with the Government Control Press, Gandhinagar since 9.9.1985 as a Copy Holder. The petitioner, as per the averments made in the petition, is Post-graduate and also holds Post-graduate Diploma in Publishing Technology. The petitioner also possesses a certificate in Computer Net Work Engineering and Certificate in Computing. It is averred in the memo of the petition by the petitioner that he has possessed the highest qualification in the field of Printing in the entire Government Press and he has been appointed as Member Secretary to the Production Committee of the Government Press.

2.2. The Gujarat Public Service Commission ('GPSC' for short) invited applications for making appointment to the post of Assistant Manager Class-II in Government Printing and Stationery Department vide Advertisement No.29/2000, released on 15.6.2000. The petitioner applied pursuant to the said advertisement for the post, vide his application dated 15.7.2000. The petitioner received communication from the GPSC-respondent No.4 hereinabove on 24.8.2000 intimating him that he was not selected for being called in the interview as he was not possessing the requisite

experience for the post. The petitioner, therefore, ascertained as to in what way the Commission treated his experience to be not in accordance with the Rules and once again, he submitted a certificate from the competent authority in respect of his experience and that certificate dated 12.9.2000 was submitted to the GPSC. The Commission, however, reiterated its stand and informed the petitioner vide its letter dated 23.10.2000 that the petitioner did not possess the experience criterion for the post. The petitioner has also made averment in the petition that, in the year 1996-1997, there was an advertisement for the post of Senior Assistant Manager, for which the petitioner was also one of the candidates. The certificate was also on the same line which was produced alongwith the subsequent advertisement. At that time, the petitioner was placed in the waiting list, but, the waiting list was not operated. Therefore, on the second occasion, the respondents ought not to have treated him to be lacking in experience. The petitioner has further averred in the petition that he is actually doing the supervisory work as there was no direct recruitment since 1993 in the department. Therefore, the petitioner ought to have been called for interview and as he was eligible, he should have been appointed on the post.

3. Shri R.D. Raval, learned advocate appearing for the petitioner, submitted that the petitioner is highly qualified person in the field of Modern

Printing Technology and his competence has been acknowledged by all the concern as he is not only appointed as Member Secretary to the Production Committee but has also been, in fact, appointed as Resource Person in imparting training, as could be seen from communications dated 23.9.1999 and 30.9.2000. Shri R.D. Raval, learned advocate appearing for the petitioner, submitted that the petitioner has also, in fact, been appointed as Examiner in Printing and Binding Trade for All India Vocational Examination, vide order dated 14.5.1998. Learned advocate Shri Raval, submitted that the advertisement does not indicate that the candidate has to hold the supervisory post for being eligible for appointment to the post of Assistant Manager Class-II in Government Printing and Stationery Department. Shri Raval, learned advocate, submitted that the post was required to be filled in by way of direct recruitment and eligibility criterion consists of educational qualification and experience. So far as the educational qualification criterion is concerned, the petitioner is absolutely eligible and fulfilling the criterion. However, due to wrong interpretation on the part of the Service Commission, the criterion in respect of experience is found to be lacking. The correct interpretation of 'experience' criterion prescribed in the advertisement dated 15.6.2000 would go to show that holding of any supervisory post by candidate is never essential criterion or requirement and, therefore, the authorities ought not to have insisted

upon the petitioner holding supervisory post only. Looking to the certificate issued by the concerned authorities, it can well be said that the petitioner fulfilled the requirement of educational criterion also and, therefore, he ought to have been considered and appointed on the post of Assistant Manager Class-II in Government Printing and Stationery Department.

4. Shri R.D. Raval, learned advocate appearing for the petitioner, invited attention of this Court to order passed by this Court (Coram: H.K. Rathod, J.) dated 20.11.2000, whereby, the Court on being *prima facie* satisfied about the petitioner's eligibility, directed the respondent to allow the petitioner to appear and attend the oral interview that was conducted by the respondent during the pendency of this petition and the result of the oral interview qua the petitioner was ordered to be kept in sealed cover. Learned advocate Shri Raval has further submitted that, as there was nothing against the petitioner in the subsequent period preventing him from being appointed, this Court (Coram: C.K. Buch, J.) vide order dated 6.9.2001, while disposing of the matter, directed the Department to open the sealed cover and act thereupon accordingly. However, the said order was set aside by the Division Bench in Letters Patent Appeal No.255/2002 in Special Civil Application No.11418 of 2000 vide order dated 6.4.2005 and the matter was remanded back to the Single Judge for adjudication on merits.

5. Learned counsel Shri S.K. Patel for respondent Nos. 1 and 4 and Mr. Amit Patel, learned Assistant Government Pleader for respondent No.3, submitted that the advertisement is in consonance with the relevant Recruitment Rules, which have been closely perused by the Division Bench of this Court in Letters Patent Appeal No. 255 of 2002 in Special Civil Application No.11418 of 2000 and, thereafter only, order of the learned Single Judge dated 6.9.2001 was set aside, where-under respondents were directed to open the sealed cover and act upon it. The learned counsel for the respondents have submitted that the recruitment to a particular post is made as per the Recruitment Rules and, therefore, Recruitment Rules shall govern the entire controversy. As per the Recruitment Rules, it is very clear that the candidate is not only to have working experience but is also required to hold supervisory post or any post in supervisory capacity for being eligible for appointment to the post of Assistant Manager Class-II in Government Printing and Stationery Department.

6. The learned counsel for the respondents, however, could not dispute the fact that the petitioner has submitted two certificates and he is, in fact, working as Member Secretary to the Production Committee and working as Examiner in Printing and Binding Trade for All India Vocational Examination.

7. Shri R.D. Raval, learned advocate appearing for the petitioner, has submitted that the recruitment being a technical work assigned to expert body of the GPSC, appropriate direction at least deserves to be issued to the respondents, including the GPSC, for considering at least representation of the petitioner keeping in mind the petitioner's actual experience in the department, his various experience which have been time and again acknowledged by the department and outside agencies when he was appointed as Examiner by the Government Agencies in respect of Printing and Binding Trade for All India Vocational Examination. Learned advocate Shri Raval submitted that the petitioner may approach the concerned authorities with appropriate representation as he has already been interviewed and his result is kept in sealed cover. The authorities may decide the petitioner's representation in stipulated time.

8. This Court has considered the record and the respective submissions of the learned counsel for the parties. The respondents have not been in position to deny that the petitioner has worked as Member Secretary to Production Committee nor had they been in position to deny the fact that the petitioner has, in fact, been appointed on some occasion as Examiner in Printing and Binding Trade for All India Vocational Examination. The petitioner appears to have in fact worked in

various areas of Printing Process and, as he has averred in the petition that he has possessed the latest knowledge of modern printing technology, the selection for recruitment to the post of Assistant Manager Class-II in Government Printing and Stationery Department is entrusted to the GPSC as the said post is fallen under the purview of the GPSC. The GPSC and the State of Gujarat, therefore, may take into consideration these aspects also. It also deserves to be noted that on 20.11.2000, this Court (Coram: H.K. Rathod, J.) in this petition, inter alia, observed as under:

> ".....This Court has perused the certificate relied upon by the petitioner and prima facie reading of this advertisement and certificate, according to my opinion, the petitioner is able to satisfy the qualification in respect of experience prescribed in the said advertisement. However, at present, this Court keeps this question open but on prima facie satisfaction of this Court, without deciding the merits of the matter, it is directed to the respondent No.1 to allow the petitioner to appear and attend oral interview to be conducted by the respondent No.1 during the pendency of the present petition and further directs that the result of the oral interview in respect of the petitioner may be put in sealed cover by the respondent No.1."

This Court (Coram: C.K. Buch, J.) on 6.9.2001, disposed the petition issuing direction for acting upon the sealed cover. This order of this Court (Coram: C.K. Buch, J.) dated 6.9.2001 had been impugned in Letters Patent Appeal No. 255 of 2002 in Special Civil Application No.11418 of 2000 and the Division Bench of this Court [Coram: G.S. Singhvi (as he then was) and Anant S. Dave, JJ], vide order dated 6.4.2005, remanded the matter back for adjudication.

9. Looking to the submissions of learned advocate Mr. Raval appearing for the petitioner, the Recruitment Rules and the language of the advertisement, this Court is of the considered view that the appropriate authority in the State in consultation with the Gujarat Public Service Commission may decide the representation of the petitioner in light of the Recruitment Rules for the post of Assistant Manager Class-II. The following directions, therefore, are required to be issued in the interest of justice:

(I) The petitioner is at liberty to make appropriate representation to the concerned Secretary in the General Administration Department, State of Gujarat.

(II) The concerned Secretary in the General Administration Department is hereby directed to decide the representation, if

any, preferred by the petitioner, within reasonable time. Representation is to be decided in consultation with the Public Service Commission in light of the Recruitment Rules for the post in question and other relevant material, in accordance with law.

(III) The respondents are expected to dispose of the representation of the petitioner preferably within six months from the date of receipt thereof.

10. Shri R.D. Raval, learned advocate appearing for the petitioner, under the instructions of his client Shri Rajeshkumar Kantilal Rami, who is present in the Court, seeks permission to withdraw this petition with a liberty to file fresh petition in case of adverse orders from the respondents.

11. Permission as sought for is granted. The matter is disposed of as withdrawn. Rule is discharged.

(S.R.BRAHMBHATT, J.)

omkar